

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**GARY RIESBERG**

Carroll County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AFO- 53

TO: Gary Riesberg  
16397 260<sup>th</sup> Street  
Manning, Iowa 51455

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gary Riesberg for the purpose of resolving violations related to a manure discharge to a creek from an open feedlot at Mr. Riesberg's facility located at 16397 260<sup>th</sup> Street, Manning, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Thad Nanfite, Field Office #4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459A and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Mr. Riesberg owns and operates an open feedlot located at 16397 260<sup>th</sup> Street, Manning, Iowa (SE ¼ of the SW ¼ of Section 19, Carroll County). The feedlot has a capacity of 220 head of beef cattle and a capacity of 1,000 head of hogs (620 total animal units).

2. Mr. Riesberg registered the feedlot with the DNR and on January 30, 2002, the DNR sent Mr. Riesberg a letter indicating receipt of the registration. The letter informed Mr. Riesberg that a permit was not required for his facility, but that minimum levels of manure controls must be provided. For his feedlot, Mr. Reisberg was required to removal all settleable solids. The letter also reminded Mr. Reisberg that water quality standards must be maintained in streams receiving liquid runoff from his facility.

3. On February 22, 2006, DNR Field Office 4 conducted an open feedlot assessment at Mr. Riesberg's facility. The field office personnel found that proper manure controls were not in place. As a result of the assessment, Mr. Riesberg agreed to submit a plan of action establishing manure controls. On March 28, 2006, DNR Field Office 4 sent Mr. Riesberg a letter providing a summary of the assessment. The letter required Mr. Riesberg to submit the plan of action by June 1, 2006 and the implementation of the plan of action was to be completed by December 1, 2006. On June 2, 2006, the plan of action was submitted for the proposed manure controls at the facility.

4. On September 18, 2007, DNR Field Office 4 visited Mr. Riesberg's facility to determine the status of the manure controls. The field office personnel noted that some temporary measures, such as removing manure, had been implemented and a clean water diversion terrace had been constructed at the north edge of the facility. However the permanent manure controls had not been constructed. On October 5, 2007, DNR Field Office 4 sent Mr. Riesberg a letter providing a summary of the visit and reminded him of the importance of implementing the permanent solids settling controls.

5. On March 12, 2008, DNR Field Office 4 conducted a follow-up visit to Mr. Riesberg's facility to record the progress of the construction of the manure controls. During the visit, the field office personnel noted that little had changed with the construction of the permanent manure controls since the September 2007 visit. On April 8, 2008, DNR Field Office 4 sent Mr. Riesberg a letter reminding him of the importance of establishing the manure controls.

6. On August 25, 2009, DNR Field Office 4 conducted a follow-up visit to Mr. Riesberg's facility. Mr. Riesberg informed the field office personnel that he had not done any further work on the solids settling controls and that he had not done anything regarding the manure storage from the open hog lot. The field office personnel informed Mr. Riesberg that the next visit would be during a precipitation event to sample any discharge from the facility.

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7. On March 9, 2010, DNR Field Office 4 conducted a visit to Mr. Riesberg's facility to sample possible discharges from the facility. The field office personnel observed manure solids and liquids flowing from the east side of the cattle feedlot to the waterway. The manure then flowed to the south toward an unnamed tributary of Brushy Creek. The manure was actively flowing under the snow to the tributary. The field office personnel collected laboratory samples just before the manure flowed under the snow pack to the tributary. The laboratory results showed a significant nutrient load entering the tributary.

8. On May 26, 2010, DNR Field Office 4 issued a Notice of Violation letter to Mr. Riesberg for the violations observed during the March 9, 2010 visit. The letter included a prohibited discharge violation and general water quality violations. The letter required Mr. Riesberg to submit a plan of action for the manure controls by August 1, 2010 and completion of the manure controls by September 1, 2010.

9. On August 12, 2010, DNR was notified through Mr. Riesberg's attorney that there were no longer any hogs at the facility and the cattle at facility will be removed by the end of September 2010. The letter from Mr. Riesberg's attorney stated that Mr. Riesberg does not intend to ever have cattle outdoors and may consider the construction of hoop barns for the cattle in the future.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.104 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 states that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director. The laboratory sample results and the visual observations made by DNR Field Office 4 during the March 2010 investigation confirm that manure from Mr. Riesberg's facility was not adequately treated or solids settled prior to being discharged to a water of the state. The above mentioned facts indicate a violation of this provision.

3. 567 IAC 65.101 states that the minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to a discharge to a water of the state. During the investigation in March 2010, DNR Field Office 4 observed manure solids suspended in the flow and settled in the flow path to the unnamed tributary of Brushy Creek. The above facts indicate a violation of this provision.

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4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. The elevated levels would be considered acutely toxic to aquatic life. The above mentioned facts indicate violations of the general water quality criteria.

**V. ORDER**

THEREFORE, the DNR orders and Gary Riesberg agrees to do the following:

1. Mr. Riesberg shall properly remove all manure from the discontinued animal feeding operation and its manure control facilities in accordance with 567 IAC 65.2(8). The manure shall be removed no later than December 15, 2010 and Mr. Riesberg shall notify DNR Field Office 4 prior to final closure of the lagoons;
2. Prior to animals being placed in the existing facilities again Mr. Riesberg shall submit an evaluation prepared by a professional engineer licensed in the state of Iowa to DNR Field Office 4 detailing the design of the manure control structures as well a plan for the intended use of the existing facilities; and
3. Mr. Riesberg shall pay an administrative penalty of \$4,000.00 in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty amount shall be due immediately.

\$800.00 due October 1, 2010;      \$800.00 due March 1, 2011;  
\$800.00 due October 1, 2011;      \$800.00 due March 1, 2012;  
\$800.00 due October 1, 2012.

**VI. PENALTY**

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$4,000.00. The administrative penalty assessed by this administrative consent order is determined as follows:

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Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10 2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10 2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Riesberg has saved time and money by not constructing the proper manure controls for the open feedlot operation. He has been able to avoid the costs and operate without incurring any of the costs associated with the construction and operation of the manure controls. It is estimated that Mr. Riesberg gained an estimated economic benefit of at least \$1,000.00. Therefore, \$1,000.00 is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle to violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 4 documented a manure discharge to a water of the state. By failing to properly construct the manure controls and allowing manure to discharge to the unnamed tributary of Brushy Creek, Mr. Riesberg has endangered the water quality of the tributary. Additionally, DNR Field Office 4 has expended a large amount of time working with Mr. Riesberg over a period of years to install the proper manure controls. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Mr. Riesberg has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Riesberg has been reminded on numerous occasions on the importance of proper manure controls at his facility. DNR Field Office 4 has made attempts to inform Mr. Riesberg of the need for proper controls. Therefore, \$2,000.00 is assessed for this factor.

## **VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Gary Riesberg. For that reason, Gary Riesberg waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief  
and civil penalties pursuant to Iowa Code section 455B.191.

  
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PATRICIA L. BODDY, INTERIM DIRECTOR  
Iowa Department of Natural Resources

Dated this 3 day of  
November, 2010.

  
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GARY RIESBERG

Dated this 29 day of  
Oct, 2010.

Facility #57685; Kelli Book, Thad Nanfeto (DNR Field Office 4), EPA, VIII A.2,  
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